In The
Supreme Court of the United States

Term,

Number, 78-941

Robert Shelton Jaggard
and
Marybeth Jaggard,
husband and wife, ... Petitioners

v.

Commissioner of Internal Revenue ..... Respondent

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

Robert Shelton Jaggard
101 Hillside Drive West
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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Petiton for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Case Number 78-1370, mandated October 2, 1978, which judgment affirmed the decision of the United States Tax Court entered February 28, 1978, denying the petitioners exempt status in re payment of Self-Employment (Social Security) taxes.

OPINIONS BELOW

A copy of the decision of the U.S. Tax Court in Des Moines, Iowa, is set forth herein as Appendix A.

A copy of the decisions of the United States Court of Appeals for the Eighth Circuit is set forth herein as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under Part V of the Rules of this Court, specifically Rule 19, section 1 (b), where a Court of Appeals has rendered a decision on an important question of federal law which has not been, but should be, settled by this Court.

Petitioners claimed exemption from payment of Self-Employment (Social Security) taxes for the year 1974. The Internal Revenue Service ruled that petitioners were not eligible for exemption. Petitioners appealed to the United States Tax Court, where hearing was held in Des Moines, Iowa on May 9, 1977, Docket No. 3378-76. Decision was entered in this case February 28, 1978, denying exemption to petitioners. Appeal was made to the United States Court of Appeals for the Eighth Circuit, and said Court of Appeals affirmed the Tax Court decision, mandated October 2, 1978, Docket number 78-1370.

QUESTIONS PRESENTED

Petitioners were denied exemption from payment of Self-Employment taxes (Social Security taxes) on the grounds that they were not members of a "recognized religious" group, and, petitioners have private insurance.

Petitioners presented to the Tax Court, and the Court of Appeals, evidence demonstrating that the Amish people have private insurance. Petitioners claim that the Amish people are exempt from payment of Self-Employment taxes while at the same time they continue to enjoy the benefits of private insurance.

The questions presented for review by this Court are:

(1) Can the Internal Revenue Service grant exemption from payment of Self-Employment taxes to "recognized religious" groups, while at the same time denying exemption to members of other groups meeting all other qualifications for exemption except the fact that they are not a "recognized religious" group?

(2) Can the Internal Revenue Service use "separate" standards for granting or denying exemption from payment of Self-Employment taxes when considering various groups and/or members of such groups for exemption, thus allowing some to have private insurance and still be exempt while refusing exemption to others on the basis of the fact that they have private insurance?

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment to the Constitution of the United States, and 26 U.S.C. Section 1402 (g), formerly known as 26 U.S.C. Section 1402 (h) before the Tax Reform Act of 1976.

The pertinent sections are:

(1) First Amendment:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . . . .

(2) 26 U.S.C. Section 1402 (g)
Members of Certain Religious Faiths,—
[1] **Exemption**— Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which make payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application

contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and
(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,
and only if the Secretary of Health, Education, and Welfare finds that—
(C) such sect or divison thereof has the established tenets or teachings referred to in the preceding sentence.
(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and
(E) such sect or divison thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

STATEMENT OF THE CASE

Petitioners claimed exemption from payment of Self-Employment taxes (Social Security taxes) on the basis that they were members of a group that does take care of its own needy and/or dependent members and that has been continually in existence since before December 31, 1950.

Hearing was held in U.S. Tax Court in Des Moines, Iowa on May 9, 1977. Petitioners were asked about the fact that they have private insurance. Petitioners noted that the Amish have private insurance, and the Amish are exempt, so, the private insurance of petitioners should not be held as a bar to their exemption. Further, petitioners were reminded that their particular "group" had not been "recognized" as a "recognized religious" group by the Commissioner of Internal Revenue. Petitioners contended that the First Amendment to the U.S. Constitution prevents the U.S. government and/or any of its agencies from "recognizing" specific religous groups and/or "establishing" any particular religious group as being "special" in regard to tax subsidy and/or exemption. Petitioners further contend that refusal by the Internal Revenue Service to treat all groups in similar manner with equal justice for all is an interference with the "free exercise of religion" guaranteed to the people by the said First Amendment.

The decision of the U.S. Tax Court was that the petitioners were not exempt. Appeal was made to the U.S. Court of Appeals for the Eighth Circuit, and the Appeals Court affirmed the decision of the Tax Court.

Neither the Tax Court nor the Appeals Court has answered our question: How can our private insurance be

used as a bar to our exemption when the Amish have private insurance **and** exemption?

REASONS FOR GRANTING WRIT

Petitioners have presented two questions for review, each of which contains substantial federal questions involving many, many people and large sums of money, and we believe that a decison by the United States Supreme Court is indicated for these questions.

CONCLUSION

Petitioners meet the same qualifications for exemption from payment of Self-Employment taxes (Social Security taxes) as the Amish people, and, the Amish are exempt, so, the petitioners should be exempt. Since an important federal question is involved, a decision by the United States Supreme Court is indicated, and petitioners request same.

Respectfully submitted,

Robert Shelton Jaggard
and Marybeth Jaggard,
husband and wife,
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Oelwein, Iowa 50662
(319) 283-3616

acting Pro Per
with petitions prepared by
Robert Shelton Jaggard

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing petition was mailed on December 1, 1978 to the Solicitor General, Department of Justice, Washington, DC 20530, and, to the Commissioner of Internal Revenue Service, and, to the Internal Revenue Service, Washington, DC.

Robert Shelton Jaggard
for petitioners
Pro Per

APPENDIX A

T. C. Memo 1978-78

UNITED STATES TAX COURT

ROBERT SHELTON JAGGARD and MARYBETH JAGGARD, Petitioners **v.**
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 3378-76 Filed February 27, 1978.

Robert Shelton Jaggard, pro se.

Albert B. Kerkhove, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

HALL, Judge: Respondent determined a deficiency in petitioners' 1974 Federal income tax in the amount of $1,042.80 The sole issue for decision is whether petitioners are liable for the tax on self-employment income under section 1401[1] and 1402 for 1974.

FINDINGS OF FACT

Petitioners, husband and wife, resided in Oelwein, Iowa, at the time they filed their petition herein. Petitioner Marybeth Jaggard is a party to this case only by virtue of having filed a joint return with her husband. When we hereafter refer to "petitioner", we will be referring to Robert Shelton Jaggard.

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1. All statutory references are to the Internal Revenue Code of 1954, as in effect during the year in issue.

During 1974 petitioner was a self-employed physician who earned $13,200 of self-employment income (within the meaning of section 1402(b)) but paid no self-employment tax.

In August 1974 petitioner sent a letter to respondent in which he stated that he had decided to file an application for exemption from self-employment taxes. In that letter he also requested the necessary forms for application for the exemption. However, petitioner never filed Form 4029 (Application for Exemption From Tax on Self-Employment Income and Waiver of Benefits) with respondent because he considered the form to be unconstitutional.

During 1974 petitioners paid $532 to a private commercial insurance company for disability insurance.

On his 1974 income tax return petitioner claimed a "religious exemption" from the tax on his self-employment income. Respondent in his statutory notice determined that petitioner was liable for the maximum self-employment tax.

OPINION

The sole issue for decision is whether petitioner is liable for the tax on self-employment income under the provisions of sections 1401 and 1402.

Section 1401 (a) provides generally for the imposition of a tax on the self-employment income of every individual. Section 1402 (h)[2] provides an exemption from the impostion of the tax for members of certain religious faiths.

Petitioner contends that the exemption based in part on membership in a "recognized religious sect" violates the establishment clause of the First Amendment to the Constitution. He requests that we eliminate this requirement from the statute and thereby allow the exemption for any individual who is conscientiously opposed to the benefits

2. Currently section 1402(g).

of public insurance, and who is a member of a group which makes provision for its dependent members. We decline to do so.

In Palmer v. Commissioner, 52 T. C. 310 (1969), the petitioners there raised the identical argument, asserting that the exemption provison was unconstitutionally narrow in scope since it extended a right or privilege to certain individuals with a particular religious belief only when they were members of a sect recognized as a body to have the same belief. 52 T.C. at 312.

There we stated:

> The limitation by Congress of the exemption to members of religious sects with established tenets opposed to insurance and which made reasonable provisions for their dependent members was in keeping with the overall welfare purpose of the Social Security Act. This provision provided assurance that those qualifying for the exemption would be otherwise provided for in the event of their dependency. Congress could reasonably conclude that individuals on their own could not be relied upon to make such provision. "No well-ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will no do." **Board of Education v. Barnette,** 319 U.S. 624, 643 (1943). Congress has great latitude in formulating classifications within a taxing statute. **Abney v. Campbell,** 206 F. 2d 836 (C.A. 5, 1953). We cannot say that this particular classification was so arbitrary as to be violative of due process of law 5/ (Footnote omitted.)

Although only some members of certain religious sects fall within the terms of the exemption, we find no violation

of the establishment clause of the first amendment. The Draft Act of 1917, 40 Stat. 76, granted exemptions to conscientious objectors who were affiliated with a "well-organized religious sect or organization * * * (then) organized and existing and whose existing creed or principles * * * (forbade) its members to participate in war in any form." These provisions were held constitutional over the argument, among others, that they tended toward the establishment of religion. **Selective Draft Law Cases**, 245 U.S. 366 (1918). In any legislative accomodation of religion there is an inherent balancing of the interests represented by the "free exercise" and the "establishment" clauses of the first amendment. See the concurring opinion of Mr. Justice Stewart in **Sherbert v. Verner**, 374 U.S. at 413. We cannot say that the balance struck by Congress in enacting the exemption clause here in controversy is constitutionally impermissible.

Petitioner apparently was unaware of our decison in **Palmer** and does not attempt to distinguish the case. We perceive no distinction. We therefore reject petitioner's contention that the exemption violates the First Amendment of the Constitution.[3] See also **Henson v. Commissioner**, 66 T.C. 835 (1976).

In light of this conclusion and petitioner's failure to

3. Petitioner also contends that the fact that he paid premiums for liability insurance to a private commercial insurance company does not preclude his entitlement to an exemption from the payment of self-employment taxes. In support of his contention petitioner argues that his purchase of private insurance does not materially differ from the practice of various religious sects of providing for their dependent members. Petitioner's contention is falsely premised on the assumption that the classification established section 1402(h) are unconstitutionally narrow and that he would be eligible for the exemption but for the fact that he paid $532 to a private commercial insurance company for disability insurance. Because we found that the exemption is not unconstitutional, we need not reach the merits of this contention.

establish that he meets the requirements of section 1402(h), we hold that petitioner is liable for the tax on self-employment income under sections 1401 and 1402.

Decision will be entered for the respondent.

APPENDIX B

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 78-1370

Robert Shelton Jaggard and Marybeth Jaggard,

Appellants,

v.

Commissioner of Internal Revenue

Appellee.

Appeal from the United States Tax Court

Submitted: September 1, 1978
Filed: September 8, 1978

Before HEANEY, STEPHENSON and HENLEY, Circuit Judges.

PER CURIAM.

Robert Shelton Jaggard appeals from a decision of the Tax Court holding him liable for self-employment taxes in the amount of $1,042.80.[1] Jaggard is a self-employed physician. Although he earned $13,200 of self-employment

1 Marybeth Jaggard, wife of Robert Shelton Jaggard, is a party to this appeal solely by virtue of having filed a joint return for the taxable year in issue.

income in 1974 he paid no self-employment tax. On his 1974 income tax return Jaggard claimed a "religious exemption" from the tax on self-employment income.[2] On appeal he argues that he is entitled to an exemption from the self-employment tax under 26 U.S.C. 1402(g).[3]

Section 1402(g) exempts members of certain religious faiths from payment of the tax if the Secretary of Health, Education and Welfare finds that the religious faith opposes acceptance of the benefits of any private or public insurance as an established tenet; that it reasonably provides for its dependent members; and that it has been in existence at all times since December 31, 1950. Jaggard concedes that he is not a member of a "recognized religious sect" within the meaning of 1402(g). He contends, however, that the exemption, because it is based in part on such membership, violates the establishment clause of the First Amendment. He argues that since this requirement is invalid, the exemption should be available to all individuals who like himself, conscientiously oppose acceptance of the benefits of public insurance and who are members of a group which makes provision for its dependent members.

Jaggard's argument has been previously considered and rejected by the Tax Court. *Henson v. Commissioner*, 66 T.C. 835, 840 (1976); *Palmer v. Commissioner*, 52 T.C. 310, 314-15 (1969). These cases hold that the purpose of 1402(g) is

2. Jaggard requested an application for exemption from self-employment taxes, Form 4029, from the Internal Revenue Service, but received no response. Jaggard, However, received a copy of Form 4029 from another individual. He failed to file this form because he considered it to be unconstitutional.

3. Prior to the Tax Reform Act of 1976, 26 U.S.C. 1402(g) was designated 26 U.S.C. 1402(h).

neither the advancement nor the inhibition of religion. It represents a congressional attempt to accomodate sincerely held religious beliefs against private and public insurance programs consistent with the overall welfare purpose of the Social Security Act. Congress could reasonably conclude that individuals on their own could not be relied upon to provide for themselves in the event of dependency, but that members of a religious sect who share these views would provide for dependent members. Although in any legislative accommodation of religion there is an inherent balancing of interest, the balance struck here was a constitutionally permissible one. We find the reasoning of these opinions to be dispositive of the issue. *Cf.*, *Wisconsin v. Yoder*, 406 U.S. 205, 222 & n.11 (1972).

The decision of the Tax Court is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.